

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DENNIS DEXTER)	
Claimant)	
VS.)	
)	
ATCHISON CASTING CORPORATION)	Docket No. 180,704
Respondent)	
Self-Insured)	

ORDER

Respondent requested review of the Award dated May 17, 1996, entered by Special Administrative Law Judge Douglas F. Martin. The Appeals Board heard oral argument November 7, 1996.

APPEARANCES

John J. Bryan of Topeka, Kansas, appeared for claimant. John W. Fresh of Atchison, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Special Administrative Law Judge awarded claimant permanent partial general disability benefits based upon a 20 percent whole body functional impairment. Respondent asks the Appeals Board to review the following issues:

- (1) Nature and extent of disability.
- (2) Whether claimant is entitled reimbursement of \$15 for per diem allowance for the day claimant visited the court-appointed physician for an independent medical examination.

- (3) Whether claimant should be entitled to request additional medical treatment upon proper application to the Director.

Those are the issues now before the Appeals Board on this review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award entered by the Special Administrative Law Judge should be affirmed.

- (1) The parties stipulated that claimant sustained personal injury by accident arising out of and in the course of employment with respondent on March 1, 1993. Claimant stipulated he was not seeking a work disability at this time but rather was requesting permanent partial general disability benefits based upon functional impairment.

As a result of work activities, claimant sustained injury to both upper extremities and underwent bilateral ulnar and median nerve releases at the wrists. The principal issue before the Special Administrative Law Judge was the nature and extent of claimant's injuries. Averaging the 23 percent and 17 percent whole body functional impairment ratings provided by Daniel D. Zimmerman, M.D., and John B. Moore, IV, M.D., respectively, the Special Administrative Law Judge determined that claimant had sustained a 20 percent functional impairment for which he awarded permanent partial general disability benefits. Respondent contends the Special Administrative Law Judge erred because the Judge did not include in the computation the 2 percent impairment rating provided by Thomas L. Shriwise, M.D.

Claimant testified that, along with other symptoms, he continues to experience aching in his hands that wakes him at night; soreness and stiffness in his hands; popping and crackling in his fingers; and tingling, swelling, and discoloration in his hands. Claimant also believes that he has lost strength in his hands and that they easily fatigue.

Dr. Moore, a board-certified hand surgeon, was appointed by Administrative Law Judge James R. Ward to provide an independent medical evaluation. Based upon his evaluation of claimant in April 1995, Dr. Moore believes claimant has a 17 percent whole body functional impairment according to the Third Edition of the AMA Guides to the Evaluation of Permanent Impairment as a result of the work-related injuries. Dr. Moore provided quite detailed testimony explaining how he determined claimant's rating.

Claimant's expert medical witness, Dr. Zimmerman, testified that claimant has sustained a 23 percent whole body functional impairment as a result of the work-related injuries he has sustained. Dr. Zimmerman examined claimant in September 1994. Dr. Zimmerman regularly provides functional impairment ratings to the federal government based upon the AMA Guides. He also provided detailed explanation how he utilized the Third Edition of the AMA Guides to rate claimant.

Respondent presented the testimony of Dr. Shriwise, the orthopedic surgeon who treated claimant. In December 1993, Dr. Shriwise rated claimant as having a 2 percent whole body functional impairment due to the bilateral upper extremity injuries. Dr. Shriwise used the

Second Edition of the AMA Guides in assessing claimant's functional impairment. Dr. Shriwise believes some of the symptoms claimant presently experiences are related to tendinitis which he expects to resolve.

After considering the entire record, the Appeals Board is also more persuaded by the testimony of Dr. Moore and Dr. Zimmerman than by Dr. Shriwise. The Appeals Board is particularly persuaded by Dr. Moore's testimony because of his being an independent expert witness selected by an administrative law judge. Therefore, based upon Dr. Moore's testimony, the Appeals Board finds that claimant's functional impairment is significantly higher than Dr. Shriwise's 2 percent rating. It appears that both Dr. Moore and Dr. Zimmerman were more cognizant of claimant's residual symptoms than Dr. Shriwise, and that both Dr. Moore and Dr. Zimmerman have more experience providing functional impairment ratings utilizing the AMA Guides. The Appeals Board finds that the Special Administrative Law Judge's determination that claimant has a 20 percent whole body functional impairment is reasonable and, therefore, adopts that conclusion as its own.

(2) The Special Administrative Law Judge awarded claimant medical reimbursement in the sum of \$61.76 which included \$15 per diem for claimant's trip to see Dr. Moore in Olathe, Kansas, for a court-ordered independent medical evaluation. Respondent contends that claimant is not entitled to that \$15 per diem. The Appeals Board disagrees.

K.S.A. 1992 Supp. 44-515 provides in part:

"If the employee is notified to submit to an examination before any health care provider in any town or city other than the residence of the employee at the time that the employee received an injury, the employee shall not be required to submit to an examination until such employee has been furnished with sufficient funds to pay for transportation to and from the place of examination at the rate prescribed for compensation of state officers and employees under K.S.A. 75-3203a and amendments thereto, for each mile actually and necessarily traveled to and from the place of examination, any turnpike or other tolls and any parking fees actually and necessarily incurred, **and in addition the sum of \$15 per day for each day or a part thereof that the employee was required to be away from such employee's residence to defray such employee's board and lodging and living expenses.**" (Emphasis added.)

Respondent contends that claimant must be away from home overnight before per diem is payable. The Appeals Board finds that the above-quoted statute does not place such restriction upon payment of per diem and, therefore, agrees with the Special Administrative Law Judge's order for reimbursement.

(3) The Special Administrative Law Judge held that claimant was entitled to request additional medical care and treatment upon proper application to the Director. Respondent contends that claimant should be denied that opportunity. The Appeals Board disagrees. Medical treatment is one of the most important rights under the Workers Compensation Act. K.S.A. 1992 Supp. 44-510 provides that it is the respondent's duty to provide the medical treatment that is necessary to care and relieve the injured worker. Claimant has sustained a

significant injury and continues to experience symptomatology related to that injury. Should additional medical care be needed sometime in the future, the question would exist whether claimant has sustained a new accident or whether the symptoms are related to the injury now before us. Without being able to foretell the future, the Appeals Board is very reluctant to terminate an individual's right to future medical benefits and, in fact, has grave reservation whether it is empowered to do so. The Special Administrative Law Judge's order regarding future medical care and treatment should be affirmed.

(4) The Appeals Board hereby adopts the findings and conclusions set forth by the Special Administrative Law Judge in the Award to the extent such findings and conclusions are not inconsistent with the above.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated May 17, 1996, entered by Special Administrative Law Judge Douglas F. Martin should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John J. Bryan, Topeka, KS
John W. Fresh, Atchison, KS
Office of Administrative Law Judge, Topeka, KS
Douglas F. Martin, Special Administrative Law Judge
Philip S. Harness, Director